STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LANDAUER ASSOCIATES, INC. N.Y.	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Years 1980 through 1982.	:	

Petitioner, Landauer Associates, Inc. N.Y., 335 Madison Avenue, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1980 through 1982 (File No. 806098).

A hearing was held before Brian L. Friedman, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on June 16, 1989 at 9:00 A.M., with all briefs to be submitted by October 24, 1989. Petitioner appeared by Carter, Ledyard & Milburn, Esqs. (Jerome J. Caulfield, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (James Della Porta, Esq., of counsel).

ISSUES

I. Whether the Division of Taxation, in computing petitioner's corporation franchise tax liability measured by entire net income plus salaries and compensation pursuant to Tax Law § 210.1(a)(3) for the year 1980, properly added back the sum of $65,000.00 which amount represented salary paid by petitioner to an officer who was located outside of New York.

II. Whether, for the years 1981 and 1982, the Division of Taxation properly included a portion of a management fee paid by petitioner to its parent corporation for services rendered by said parent as compensation paid to a stockholder owning in excess of five percent of its issued capital stock when computing petitioner's franchise tax liability measured by entire net income plus salaries and other compensation pursuant to Tax Law § 210.1(a)(3).

FINDINGS OF FACT

Pursuant to an audit of Landauer Associates, Inc. N.Y. (hereinafter "petitioner"), the Division of Taxation, on April 23, 1987, issued to petitioner statements of audit adjustment and notices of deficiency as follows:

Period Ended	Tax	Interest	Total
12/31/80	$ 1,487.00	$ 1,507.00	$ 2,994.00
12/31/81	$29,306.00	$23,753.00	$53,059.00
12/31/82	$43,613.00	$24,622.00	$68,235.00
*12/31/82	$ 7,851.00	$ 4,432.00	$12,283.00

* Metropolitan Commuter Transportation District surcharge imposed pursuant to Tax Law § 209-B.

Previously, petitioner had executed consents extending the period of limitation for the assessment of Article 9-A tax as follows:

Executed	Year(s) Ended	Date to Assess Tax
7-16-84	12-31-80	3-31-85
12-24-84	12-31-80, 12-31-81	12-31-85
11-12-85	12-31-80, 12-31-81, 12-31-82	9-30-86
6-9-86	12-31-80, 12-31-81, 12-31-82	6-30-87

For the years at issue herein, petitioner and its affiliated corporations (the "Landauer Group") were engaged in the real estate counselling and advisory business. These corporations performed an appraisal and valuation function for commercial properties. The corporations also performed a marketing and financial services function for their clients, i.e., they made up marketing brochures and attempted to assist the client in divesting itself of the property. During these years, the Landauer Group maintained offices in New York City, Atlanta, Georgia, West Palm Beach, Florida, Chicago, Illinois, Houston, Texas and Santa Ana and Los Angeles, California. Petitioner's affiliates included wholly-owned subsidiary corporations operating in New York, Texas, California and Florida, and a parent corporation, Landauer International, Inc. (hereinafter "LII"). Petitioner and its parent, LII, shared offices at 200 Park Avenue, New York, New York. On its Form CT-3, Corporation Franchise Tax Report, for 1981 and 1982, LII listed its principal business activity as "holding corporation". LII owned 100 percent of petitioner's stock.

For the year 1980, a portion of the tax deficiency resulted from the disallowance of a net operating loss ($332,666.00) by the Internal Revenue Service, failure to deduct contributions ($1,332.00) claimed on Form CT-3360, Report of Change in Taxable Income by U.S. Treasury Department, and allowance of Georgia income taxes ($5,031.00) which petitioner erroneously added back. For 1981, petitioner failed to add back additional New York State franchise tax ($4,265.00), but was allowed Georgia income taxes ($3,000.00) which had been erroneously added back. The Division of Taxation, for 1982, allowed petitioner the sum of $10,950.00 for Georgia income taxes which it had erroneously added back. None of these adjustments are in dispute herein.

For each of the years at issue, the Division of Taxation determined that petitioner was liable for New York State corporation franchise tax under the alternate method (then in effect) set forth in Tax Law § 210.1(a)(3) which method computed the tax on a percentage of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five percent of its issued capital stock.

On its Federal Form 1120, U.S. Corporation Income Tax Return, for 1980, petitioner claimed to have paid compensation to its officers in the amount of $1,532,500.00 (total officers' compensation was $1,841,500.00 which included compensation to officers of its subsidiaries). On its State of New York Corporation Franchise Tax Report (Form CT-3) for 1980, petitioner listed officers' compensation of $1,467,500.00. The difference between the amounts reported on petitioner's Federal and State returns was the salary ($65,000.00) paid to S. Wight, a vice-president who was in charge of the Atlanta, Georgia office of the Landauer Group. The Division of Taxation deemed this $65,000.00 to be compensation paid to officers which was subject to the alternate method set forth in Tax Law § 210.1(a)(3) and, along with the

adjustments previously noted in Finding of Fact "4", supra, formed the basis of the franchise tax deficiency of $1,487.00 asserted against petitioner for 1980.

In 1981 and 1982, petitioner and LII entered into an arrangement whereby LII would perform certain managerial functions and services for petitioner (and its affiliates) in exchange for the payment of a management fee. The functions and services performed by LII included those such as accounting and bookkeeping. LII also paid certain administrative and overhead expenses on behalf of petitioner and other members of the Landauer Group. For 1981, petitioner paid a management fee to LII in the amount of $2,218,501.00 and, for 1982, it paid a management fee of $3,236,171.00. The stated purpose (by petitioner's vice-president and comptroller, Emil F. Renak) of the management fee was to allow LII to recover its costs (incurred in the payment of the administrative and overhead expenses on behalf of petitioner and its affiliates) and to make a "modest" profit. The amount of the management fee was determined on a percentage basis of the revenues of each of the members of the Landauer Group.[1]

As previously indicated (Finding of Fact "3", supra), for 1981 and 1982, petitioner and LII shared offices at 200 Park Avenue in New York City. In addition, the president, the two executive vice-presidents and the comptroller of LII served in the same capacities for petitioner. For 1981, LII's income consisted of $2,218,501.00 in management fees and $329,508.00 in other income (categorized by Mr. Renak as investment income) for a total income of $2,548,009.00. LII's total expenses for 1981 were $2,488,677.00 for a net income of $59,332.00. Management fees constituted 87.0680 percent

of total income for 1981. In 1982, LII's income was $3,236,171.00 from management fees (88.6160 percent of total income) and $415,733.00 from other income for a total income of $3,651,904.00. Total expenses were $3,310,055.00 for a net income of $341,849.00.

The management fees paid to LII were deducted by petitioner on its Federal and State returns for 1981 and 1982 and were included by LII as income on its returns for said years. Because some of its subsidiaries were located outside of New York State, petitioner's business allocation percentages were 88.46066 percent and 86.89411 percent for 1981 and 1982, respectively. LII's business allocation percentage was 100 percent for both years.

In addition to the management fees paid to LII, petitioner claimed deductions for rents in the amount of $287,499.00 for 1981 and $416,845.00 for 1982 and for advertising expenditures of $82,171.00 and $82,971.00 for 1981 and 1982, respectively. Attached to its Federal Form 1120 for each year was a schedule which enumerated other deductions taken on line 26 of such return. These deductions were as follows:

	1981	1982
Travel and entertainment	$ 106,382.00	$ 126,185.00
Office equipment	2,790.00	3,322.00

[1]The method of the calculation of the amount to be paid to LII as a management fee is unclear from the record. Allegedly, each of the members of the Landauer Group (seven in all, including petitioner) paid a management fee based upon a percentage of the revenues from each. However, the profit and loss statements of LII for 1981 and 1982 indicate that, other than certain investment income, LII's total income consisted only of the management fees received from petitioner.

Maintenance		9,532.00	16,608.00
Equipment rental		63,117.00	95,939.00
Telephone and telegraph		95,304.00	119,124.00
Postage		13,849.00	18,740.00
Office supplies and forms		41,183.00	46,023.00
Insurance		41,641.00	6,994.00
Professional service		62,632.00	6,877.00
Data processing		4,235.00	21,165.00
Shareholder referral fees		49,491.00	330,212.00
Miscellaneous		48,428.00	105,574.00
Library		7,134.00	10,577.00
Management fees		2,218,501.00	3,236,179.00
Other employee expenses		131,599.00	65,671.00
Licenses		2,546.00	1,556.00
Outside consulting		171,031.00	17,806.00
Messengers and freight		5,852.00	10,273.00
Automobile	-0-		2,142.00
Company meetings	-0-		222.00
Amortization	-0-	54,547.00	
Total		$3,075,247.00	$4,295,736.00

The Division of Taxation determined the franchise tax deficiencies by means of the following computations:

	1980	1981	1982	1982 MTA Surcharge
ENI per CT-3	(247,632)	934,764	504,236	
RAR per CT-3360*	332,666			
Contributions claimed on CT-3360	(1,332)			
Additional NYS franchise tax		4,265		
Tax erroneously added back (Georgia)	(5,031)	(3,000)	(10,950)	
ENI PER AUDIT	78,671	936,029	493,286	
Officers' salaries (per 1120)	1,532,500	2,445,567	2,781,239	
Management Fee (portion subject to alternate base)		1,126,082	1,684,004	
Statutory exclusion	(15,000)	(30,000)	(30,000)	
Net	1,596,171	4,477,678	4,928,529	
30% thereof	478,851	1,343,303	1,478,559	
Business allocation % per audit	89.1512%	88.0053%	86.8941%	
Allocated Income	426,901	1,182,178	1,284,780	
Tax @ 10%	42,690	118,218	128,478	
Tax on Sub Capital per CT-3		5	9	
Total	42,690	118,223	128,487	23,128

Tax per CT-3 and CT-3360	41,203	88,917	84,874	15,277
Asserted Deficiency	$1,487	$29,306	$43,613	$7,851

* Revenue Agent's Report disallowing net operating loss.

The portion of the management fee paid by petitioner to LII for the years 1981 and 1982 which the Division of Taxation determined must be included in the alternate tax base was determined as follows:

	1981	1982
Officers' Compensation	$ 374,354.00	$ 872,000.00
Salaries & Wages	781,331.00	552,331.00
Pension & Profit Sharing	55,795.00	101,331.00
Other Benefit Plans	22,648.00	32,823.00
LII Net Income	59,332.00	341,849.00
Management Fee in Excess of Reimbursement	$1,293,460.00	$1,900,334.00

Multiply by Ratio:		
Mgmt. Fee/	$2,218,501.00	$3,236,171.00
LII Gross Receipts	$2,548,009.00	$3,651,904.00
	0.87068	0.886160
Mgmt. Fee Subject to Alternate Base	$1,126,082.00*	$1,684,004.00*

* The actual mathematical results derived from multiplying the management fees in excess of reimbursement by the above percentages (management fee divided by LII gross receipts) are $1,126,190.00 for 1981 and $1,684,000.00 for 1982. Since the discrepancies are quite small (a total of $104.00) and are to the advantage of petitioner, no adjustments shall be made herein.

On February 11, 1985, petitioner filed a petition for Advisory Opinion which raised the issue relating to the Division of Taxation's determination of franchise tax deficiencies for 1981 and 1982, i.e.,

> "whether a portion of a management fee paid by a subsidiary to its parent corporation for services rendered by the parent corporation should be included by the subsidiary as compensation paid to every stockholder owning in excess of five percent of its issued capital stock when computing the franchise tax measured by entire net income plus compensation pursuant to section 210.1(a)(3) of the Tax Law, to the extent of salaries paid to officers and employees of the parent corporation, including any profit sharing and employee benefits."

The Advisory Opinion, issued October 22, 1986, concluded as follows:

> "Accordingly, when computing the tax measured by entire net income plus compensation pursuant to section 210.1(a)(3) of the Tax Law, Petitioner must include as 'salaries and other compensation' the portion of the management fee paid to its parent that is in excess of the reimbursement of expenses paid by the parent on behalf of Petitioner. This amount includes salaries and the related expenses of the parent's employees and officers as well as any profit factor included in the management fee."

Along with its brief, petitioner submitted 12 proposed findings of fact. In accordance with State Administrative Procedure Act § 307(1), petitioner's proposed findings of fact have been generally accepted with the following exceptions: proposed findings of fact "4" through "6" are rejected as not being fully supported by the evidence. With respect to proposed findings of fact "4" and "5", Finding of Fact "9" indicates that, in addition to the management fee paid to LII, petitioner claimed deductions for several of the administrative and overhead expenses allegedly paid by LII and reimbursed to LII by means of the management fee. While proposed finding of fact "6" states that total expenses were allocated among the various members of the Landauer Group by means of a management fee paid by those members to LII, LII's profit and loss statements for 1981 and 1982 (Petitioner's Exhibit #1) indicates that LII received such a management fee only from petitioner. Proposed finding of fact "7" is conclusory in nature and is irrelevant to the issues herein. Proposed finding of fact "8" is accepted in part (i.e., total expenses of LII are set forth in Finding of Fact "7", supra). However, the fact that such expenses were paid on behalf of its subsidiaries is not supported by the evidence. Proposed finding of fact "9" is conclusory in nature and is irrelevant to the issues herein.

SUMMARY OF THE PARTIES' POSITIONS

Petitioner's position may be summarized as follows:

(a) No portion of the management fee paid to LII should be considered compensation paid to a stockholder within the meaning of Tax Law § 210.1(a)(3). The basis for this contention is that such payment to a corporate shareholder does not cause an erosion of the franchise tax base, the prevention of which was the stated purpose of enactment of the provisions of the Tax Law which provided for this alternate tax base. Petitioner contends that the tax base was not eroded because petitioner's deduction for payment of the management fee is offset by an equivalent increase in LII's franchise tax base.

(b) Petitioner contends that the statutory language contained within Tax Law § 210.1(a)(3) relating to "salaries and other compensation" should be interpreted as applying only to items of the same general kind or class as the term "salaries" and should not refer to intercompany payments such as the management fees at issue herein.

(c) Petitioner's position is that, even if the Division of Taxation properly took into account such payments to a corporate shareholder for purposes of this alternate method, the deficiencies asserted herein are too large. Petitioner contends that salary and benefit plans should not be added back since they are merely payroll items paid by LII on behalf of petitioner. Petitioner states that the portions of management fees which should be subject to this alternate tax base are $51,659.00 for 1981 and $302,933.00 for 1982. These amounts were calculated by petitioner as follows:

	1981	1982	
LII Revenues		$2,548,009.00	$3,651,904.00
Mgmt. Fees Received		2,218,501.00	3,236,179.00
Portion of Revenues Represented by Mgmt. Fees	87.0680%	88.6160%	
LII Net Income		59,332.00	341,849.00
Portion of Net Represented by Mgmt. Fees		51,659.00	302,933.00

Using petitioner's calculation in determining the portion of management fees which it contends is subject to the alternate base, petitioner contends that the proper franchise tax deficiencies for 1981 and 1982 should be as follows:

	1981	1982	MTA Surcharge
ENI per CT-3	934,764	504,236	
Additional NYS franchise tax	4,265		
Tax erroneously added back	(3,000)	(10,950)	
ENI PER AUDIT	936,029	493,286	
Officers' salaries (per 1120)	2,445,567	2,781,239	
Management Fee (portion subject to alternate base	51,659	302,933	
Statutory exclusion	(30,000)	(30,000)	
Net	3,403,255	3,547,458	
30% thereof	1,020,977	1,064,237	

Business allocation % per audit	88.0053%	86.8941%	
Allocated Income	898,513	924,760	
Tax @ 10%	89,851	92,476	
Tax on Sub Capital per CT-3	5	9	
Total	89,856	92,485	16,647
Tax per CT-3 and CT-3360	88,917	84,874	15,277
Deficiency	$939	$7,611	$1,370

(d) With respect to the deficiency for 1980, petitioner contends that since the revenues generated by the activities of non-New York officers are not taxed by New York, the salaries paid to those officers should not form a part of the alternate method calculation. Reduction of officers' salaries (see, calculation of 1980 deficiency in Finding of Fact "10") by $65,000.00 (from $1,532,500.00 to $1,467,500.00), which amount represents salary paid by petitioner to S. Wight, a vice-president who was in charge of the Atlanta, Georgia office of the Landauer Group, eliminates the asserted deficiency of $1,487.00 in its entirety.

The Division of Taxation maintains that petitioner's payments to LII were not, in fact, merely reimbursement for administrative expenses since the common officers of LII and petitioner received substantial salaries from both corporations which is an indication that they performed more than administrative and clerical functions. In addition, the Division maintains that the method of allocation of LII's expenses to the group was arbitrary since officers' salaries were not allocated based on time spent on behalf of each member of the group, but were, instead, allocated on a percentage basis. The Division argues that for purposes of defining the term "other compensation" as found in Tax Law § 210.1(a)(3), the logical definition is one which encompasses payments to a parent corporation for services (except to the extent that such payments represent reimbursement for out-of-pocket expenses) since it is clear that one corporation cannot be an employee of another corporation. Therefore, the term "other compensation" cannot have a meaning similar to that of the term "wages". Finally, with respect to the deficiency asserted for 1980, the Division of Taxation contends that there is no provision in the Tax Law or in the regulations promulgated thereunder for the exclusion from the calculation at issue herein of payments of officers' salaries to non-New York officers.

CONCLUSIONS OF LAW

A. For the years at issue, section 210 of the Tax Law provided four alternative methods for the computation of the corporation franchise tax imposed under Article 9-A. This section further provided that a taxpayer was to compute its tax liability using each of the alternative methods and pay tax based upon whichever of these alternatives resulted in the largest tax liability.

The first of the four alternatives was computed on the basis of the corporation's entire net income (Tax Law § 210.1 [former (a)(1)]). The second alternative was computed on the basis of the corporation's total business capital and investment capital (Tax Law § 210.1 [former (a)(2)]). The third alternate base was computed based upon entire net income plus compensation to officers and stockholders (Tax Law § 210.1 [former (a)(3)]). The fourth alternative was a flat minimum tax (Tax Law § 210.1 [former (a)(4)]).

In the present matter, petitioner properly used the third alternative to compute its corporation tax. Tax Law § 210.1 (former [a][3]) provided, in part, as follows:

"The tax imposed by subdivision one of section two hundred nine of this chapter shall be, in the case of each taxpayer:

* * *

(3) computed at the rate of ten per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars [increased to thirty thousand dollars for tax years beginning on and after January 1, 1981 (L 1981, ch 41, § 1)] (except as hereinafter provided) and any net loss for the reported year, or on the portion of such sum allocated within the state as hereinafter provided for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section" (repealed, L 1987, ch 817, § 23, eff August 7, 1987).

While petitioner properly employed the alternative tax base set forth in Tax Law § 210.1 (former [a][3]), the issues to be dealt with herein concern the parties' interpretations of "salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock...."

B. With respect to the deficiency of corporation franchise tax for 1980, it is petitioner's position that since the revenues generated by the activities of a non-New York officer are not taxed by New York, the salary paid to such officer should not be included in this calculation. Petitioner's position might have merit if this alternate tax base was computed by multiplying entire net income times the business allocation percentage to obtain the allocated net income and then adding officers' salaries. However, the tax base is, in fact, computed by adding together entire net income and officers' salaries, deducting the statutory exclusion, taking 30 percent of this amount and then multiplying the result by the business allocation percentage to obtain allocated income. Since the total of officers' salaries is subject to the business allocation percentage, petitioner's position is without merit. Moreover, 20 NYCRR 3-3.2(d) provides as follows:

"For purposes of this Subpart, the term 'elected or appointed officer' includes the chairman, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, comptroller, and any other officer, irrespective of title, who is charged with and performs any of the regular functions of any such office. A director is not an elected or appointed officer unless he performs duties ordinarily performed by an officer. <u>All compensation received by an elected or appointed officer from the taxpayer in any capacity</u>, including director's fees, <u>must be included in computing the tax measured by entire net income plus compensation</u>. (Emphasis added.)

Since there is no provision in the Tax Law or the regulations which excludes compensation paid to non-New York officers, it must be presumed that the salaries and/or compensation paid to S. Wight, an officer of petitioner who was located in Atlanta, Georgia, must be included in this computation. The franchise tax deficiency for the year 1980 is, therefore, sustained in its entirety.

C. 20 NYCRR 3-3.2(f) provides that a "stockholder owning in excess of five percent of its issued capital stock", as such term is used in Tax Law § 210.1 (former [a][3]), "means a person <u>or corporation</u> who is the beneficial owner of more than five percent of the total number of shares of the issued and outstanding capital stock of the taxpayer." (Emphasis added.)

While petitioner correctly points out that the legislative history of Chapter 385 of the Laws of 1929 (which added a new section 214.10 to the Tax Law, subdivision 3, which was the predecessor to Tax Law § 210.1 [former (a)(3)]) stated that this alternate method was intended to prevent the erosion of the franchise tax base by the payment of excessive compensation to stockholders and officers (20 NYCRR 3-3.1[b] states this intent as well), the fact that, under the circumstances herein, such erosion may not have occurred is not sufficient justification for eliminating the management fees paid to LII from this alternate tax base. Petitioner further contends that the term "other compensation" refers to amounts paid to individuals in lieu of salary such as directors' fees, professional fees, etc., items which would be of the same general kind or class as the more specific term "salaries". Webster's New Collegiate Dictionary (9th ed 1988) defines "compensation" as a payment or remuneration. Webster's defines "remunerate" as the paying of "an equivalent to for a service, loss, or expense." While these management fees may not have been contemplated by the original drafters of the legislation establishing this particular statute, it must be presumed, absent any statute or regulation to the contrary, that such management fees must be included in this alternative tax base computation.

Petitioner, in its brief, states that the Division of Taxation has conceded that its own calculations of the deficiencies for 1981 and 1982 are incorrect by reference to the Division's answer to its petition wherein it is stated that the management fees must be included "to the extent that such fee or charge exceeds the reimbursement of expenses paid by the parent on behalf of the subsidiary." The Advisory Opinion (see, Finding of Fact "11") requested by petitioner states precisely the same thing. However, it is incumbent upon petitioner to prove exactly what portion of the management fees was to reimburse LII for its expenditures on petitioner's behalf and what portion was for profit for LII (see, Tax Law § 1089[e]).

Petitioner alleges that, for 1981 and 1982, LII paid all administrative and overhead expenses of the Landauer Group and that such expenses included salaries for administrative personnel, rent, building and equipment maintenance, advertising, insurance, etc. While LII's profit and loss statements and tax returns indicate that expenses for such services were incurred, petitioner's returns do likewise (see, Finding of Fact "9"), i.e., petitioner also took a tax deduction for these expenses. Petitioner admits that the management fees were not based on reimbursement plus a profit for LII but were, instead, determined on a percentage of total revenues. It must also be noted that despite petitioner's assertions that various members of the Landauer Group paid a management fee to LII, the Federal and State returns of LII indicate that, other than small amounts earned as interest, LII's sole revenue was derived from petitioner's management fee.

The Division of Taxation's determination of the portion of the management fee which was to be subject to the alternate tax computation at issue was calculated by applying a ratio of management fee received by LII to LII's gross receipts which resulting percentage was applied only to those expenses of LII relating to compensation, i.e., officers' compensation, salaries and wages, pension plan contributions and employee benefit plans. The result of these calculations was that for 1981, 50.76 percent of the management fee was deemed to have been in excess of reimbursement and, for 1982, such percentage was 52.04 percent. It should be noted that these expenses of LII relating to compensation comprised nearly 50 percent of its total expenses for each of said years. It is, therefore, determined that the Division of Taxation's calculations of the amounts to be included in the alternate tax base, absent a showing by petitioner of the portion of the management fee which actually represented expense reimbursement, is reasonable and the corporation franchise tax deficiencies asserted against petitioner for 1981 and 1982 are sustained in full.

D. The petition of Landauer Associates, Inc. N.Y. is denied and the notices of deficiency issued to said petitioner on April 23, 1987 are sustained in their entirety.

DATED: Troy, New York
April 12, 1990

/s/ Brian L. Friedman
ADMINISTRATIVE LAW JUDGE